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Supreme Court, U.S.
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No. 90-6588
No. 90-1205

In The
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., et al.,
Petitioners

United States of America,
Petitioners

v.

William Allain, Governor
State of Mississippi, et al.
Respondents

REPLY BRIEF OF PRIVATE PETITIONERS

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The Petitions for Writs of Certiorari Should be Granted

I. The Significant Issues Involved In This And Other Pending Cases Should, For The First Time, Be Settled By This Court

Beginning with Brown v. Board of Education, 347 U.S. 483 (1954), this Court has on at least 24 occasions given plenary consideration to issues concerning the elimination of racial discrimination in public elementary and secondary schools. See Attachment at A.1-2. Moreover, review was recently granted in a twenty-fifth instance. Id. at A.2. The great issues involved in this case -- which also arise in current litigation in Louisiana and Alabama, as well as other states subject to Title VI standards -- deserve plenary treatment for the first time. A fair conclusion based upon the difficulty which the lower courts have had in applying Bazemore v. Friday, 478 U.S. 385 (1986)[1] is that respondents' approach in opposing the granting of review involves resolution of very significant issues by speculative extrapolation from precedent, not application of rules "settled by this Court."

II. The Petitions Focus Upon The Correct Application Of Legal Principles To The Material Facts

The respondents contend in part that review should be denied because petitioners seek merely a third opportunity to secure acceptance of their views of the facts. Respondents' Opposition at 11, 13. They write: "Review by this Court is unnecessary

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[1] See private plaintiffs' Petition at 24.

since petitioners are entitled to no relief on this record regardless of whether Bazemore is strictly applied or some more 'exacting' standard under Green is invoked (at 11)." This contention does not withstand scrutiny. The lower courts erred in applying (or refusing to apply) legal principles to the material facts, whichever of the three general approaches advanced by the parties is deemed to be applicable.

A. The Material Facts

The respondents' approach to the facts, petitioners respectfully submit, is to advance "the trees" to mask "the forest." Petitioners, therefore, briefly summarize the material facts as of the trial (set forth at greater length in their petition at 4-11), as follows:

- The problem of lack of parity in black citizens' participation in the system of higher education -- which the defendant-Board identified as a consequence of discrimination (Petit. at 3, n.4) -- persists. See Petit. at 4-5.

- The en banc majority stated (Ayers III, A.85):[2]

> The district court incorrectly concluded that the disparities among the institutions were not reminiscent of the former de jure system. Ayers I, 674 F. Supp. at 1560. On the contrary, the disparities are very much reminiscent of the prior system....

[2] Citations are to private petitioners' appendix.

Thus, 70% of the black students in the system, who were attending Historically Black Institutions (A. 137), at which defendants' policies and practices had promoted their enrollment (see Petit. at 14 - 17), continued to receive, due to state action, educations tainted by racial discrimination.

- Less than one of each 100 white undergraduates attended a historically black institution (see Petit. at 5) -- precisely what one would expect given the finding on lingering disparities.

- Similarly, only one of each 33 white graduate students attended a historically black institution. See Petit. at 5.

- With reference to possible future progress, the en banc court found with regard to the institutional mission designations adopted in 1981, after discrimination had produced institutional disparities (Ayers III, A. 83):

> The record...supports the plaintiffs' argument that the mission designations had the effect of maintaining the more limited program scope at the historically black universities....

- Only two black persons, in total, had been employed at the highest administrative levels of the five white institutions despite considerable turnover (see Petit.

at 6-7), continuing both the exclusion of black persons from a fair role in governance of the system and the pernicious messages of exclusion.

- Almost 98% of administrators were placed in accordance with the traditional racial designations (see Petit. at 6) -- to which defendants respond by citing district court findings of neutrality in policies and procedures and affirmative action. Opp. at 3, 7.[3]

- The five white institutions employed a total of only 60 black faculty members, a figure exceeded by each of the three historically black institutions alone. See Petit. at 7.

- The white institutions and their students were the beneficiaries of better funding, a factor explained by a criterion shaped by discrimination. See Petit. at 9-10.[4]

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[3] While the focus here is not intent, there is as much chance that neutrality and affirmative action produced the facts which petitioners cite about administrators as there was that it just happened that Alabama legislation changed the boundaries of Tuskegee from square to "a strongly irregular twenty-eight sided figure" thereby "remov[ing] from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident." See Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[4] To be sure, some black students shared in higher expenditures at white institutions. Opp. at 7-8. However, Dr. Leslie, the funding expert, testified about funding for all white versus all black students on a true average basis. Tr. 581-84.

- The defendants utilized a racially discriminatory testing requirement for admission from 1961 to 1977, at minimum. See Petit. at 12-13. Judged by correct standards, this discrimination continues to the present. See Petit. at 44-48.

B. The Defendants Can Not Be Held To Have Fulfilled The Remedial Obligation Elucidated In Green And Other Decisions

The defendant Board contends that the record warrants dismissal even if a "more 'exacting' duty to disestablish arguably applicable under Brown and Green" applies. Opp. at 21-24. This is not the case.

If as private petitioners contend, the classical approach articulated in Green and other cases applies (see Petit. at 27-41), the issue is not merely whether defendants have engaged in some affirmative action. Opp. at 22-23.[5] It is instead whether taking account of "every facet of school operations" subject to discrimination, "the vestiges of past discrimination ha[ve] been

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"In 1986, the student gap was 1840 dollars..." with white students favored. Tr. 584.

[5] The respondents overstate the extent of their remedial efforts. The en banc court found that "disparities among the institutions" persist and that the mission designations freeze in this pattern. Ayers III, A.83,85. Thus, their recruitment efforts sought to draw students and staff to schools with "disparities" "very much reminiscent of the prior [discriminatory] system," as well as schools racially identifiable by reason of staff allocation. See Petit. at 19, n.25, 20-21, n.28. The defendants' funding formula did not include any factor based on the premise that earlier funding was not equitable to historically black institutions and their students. A. 171-72.

eliminated to the extent practicable." Board of Education of Oklahoma City v. Dowell, ___ U.S. ___ (Jan. 15, 1991), 111 S.Ct. 630, 638; see also Petit. at 27-29. Manifestly, no affirmative answer to this question is possible where (i) the current configuration of the elements of the system explicitly found to be subject to discrimination (A.6,29) is so racially skewed (see supra) and (ii) there has been no remedy proceeding. The fact, previously emphasized by private petitioners, that the district court expressly denied respondents' motion seeking "a single trial" addressing liability and remedy (Petit. at 1-2, n.2) is unchallenged.[6]

A focus on remedy may not be discounted in advance as insignificant. There are remedies to consider, including detailed criteria formulated by the U.S. Department of Education, (see Petit. at 18, n.23 and A.90-96); and proceedings could encompass, as necessary: a requirement that the defendants prepare and file a remedial plan,[7] incorporation of proposals from plaintiffs and their experts,[8] the court's reliance on its

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[6] Nevertheless, respondents repeatedly argue as if it had been fairly decided that nothing more could be done. Compare Opposition at 3, 6, 18, 22-23 and Petition at 48-49.

[7] E.g., Brown v. Board of Education, 349 U.S. 294, 301 (1955); Dowell v. School Board of Oklahoma City Public Schools, 219 F. Supp. 427, 447-48 (W.D. Okla. 1963).

[8] E.g., Dowell v. Board of Education of Oklahoma City, 338 F. Supp. 1256, 1273 (W.D. Okla. 1972), aff'd, 465 F. 2d 1012, 1014-15 (10th Cir.), cert. den., 409 U.S. 1041 (1972).

own expert or master,[9] and "fine tuning" or supplementation of remedies once attempted[10] (after all, Mississippi promoted racial discrimination for many years).

C. Application Of Bazemore To This Case Involves Significant Legal Issues

The contention that application of Bazemore to this record involves only factual issues (Opp. at 11) is erroneous. First. The en banc court erred as a matter of law by concluding, that the Mississippi defendants "ha[ve] adopted a wholly neutral admissions system." Bazemore, supra, 478 U.S. at 408. See Petit. at 12-18, 44-48. Second. In contrast to Bazemore where there was "no evidence of any discrimination...in...services" (478 U.S. at 407), the en banc court found that disparities persisted. Ayers III, A.85. Then, however, that court did not apply the portion of Bazemore discussing services to its finding, although it was relevant to both separation and unequal opportunity. Finally, there is a need to delimit the parameters of the concept of "wholly voluntary and unfettered choice of private individuals" (Bazemore, supra, 478 U.S. at 407) -- a task which was unnecessary in Bazemore and involves a legal judgment. In the time period before Green limited use of free choice plans

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[9] E.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 7-11, 32 (1971).

[10] E.g., Board of Education of Oklahoma City v. Dowell, ___ U.S. ___, 111 S.Ct. 630, 633 (Jan. 15, 1991) (describing revisions to plan); Morgan v. Nucci, 831 F.2d 313, 331 (1st Cir. 1987).

at the elementary and secondary levels, the Court of Appeals for the Fifth Circuit recognized that segregation will be the product not only of a rigid policy of separation, but also of other factors such as staff segregation and program disparities which promote racially-based choices, and thereby also "fetter" choice. Similarly, one must conclude in view of objective data in the record about staffing patterns and the en banc court's own finding about disparities that the defendants have not fulfilled the obligation articulated in Bazemore. Private petitioners rely on their petition for further elaboration of this point. See Petit. at 19, n.25; 20-21, n.28; 37. Bazemore did not hold that superimposing choice on a "loaded game board" is permissible.[11]

D. The En Banc Court Did Not Confront Plaintiffs' Regulatory Claim Concerning The Board's Overall Obligation

The respondents, like the en banc court, do not fairly confront plaintiffs' regulatory claim concerning the Board's overall obligation based upon 34 C.F.R. §100.3(b)(6)(i) and the six pages of U.S. Department of Education standards (A.90-96). Compare Ayers III, A.80-81, n.11; Opposition at 23, n.14; and Petition at 43. Petitioners rely upon their earlier discussion. See Petit. at 42-43.

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[11] Private petitioners persist in the view that Bazemore is not the proper starting point for defining the Board's overall obligation. See Petit. at 31-34.

III. The Decisions of the Courts of Appeals for the Fifth and Sixth Circuits Are in Conflict

In Geier v. University of Tennessee, 597 F.2d 1056, 1065 (6th Cir.), cert. denied, 444 U.S. 886 (1979), the court wrote:

> The appellants argue that Green and similar decisions apply only to elementary and secondary education, not to public higher education. Green was concerned with whether a violation which continued after a freedom-of-choice plan was initiated required affirmative action. We conclude that the Green requirement of an affirmative duty applies to public higher education as well as to education at the elementary and secondary school levels. We agree with the court in Norris v. State Council, supra, that 'the state's duty is as exacting' to eliminate the vestiges of state-imposed segregation in higher education as in elementary and secondary school systems; it is only the means of eliminating segregation which differ. 327 F. Supp. at 1373.[12]

When it turned to the facts at hand, the court focused not only on affirmative state conduct impeding the dismantling of the discriminatory system (Opp. at 12), but also, repeatedly, "inaction" as well, Geier, supra, 597 F.2d at 1067. Thus it noted the "failure by state officials to take meaningful actions to facilitate [TSU's] desegregation while acting with respect to UT-N in ways which impeded the required dismantling of the dual system." Id.[13] It is apparent that there is one law for Tennessee and one law for neighboring Mississippi.

Moreover, this record reflects affirmative action impeding

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[12] The Sixth Circuit's footnote is omitted. The full citation to Norris is Norris v. State Council of Higher Education for Virginia, 327 F. Supp. 1368 (E.D. Va.), aff'd mem., 404 U.S. 907 (1971).

[13] See also id. ("...actions and inactions..."); ("...actions and failures to act...").

disestablishment of Mississippi's discriminatory system. Petitioners have noted, in part, the pattern as of 1963 and later of minimum ACT score requirements for admission, and exceptions, which, in view of the spread by race of test scores, has been consistent with perpetuation of the racial status quo. See Petit. at 14-17. The same is the case regarding the mission designations of 1981. See page 3, supra.[14]

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[14] In addition, following the district court decision, the Board has begun to reintroduce at the Universities Center in Jackson, Mississippi the type of competition for white students between a white institution functioning at the Center and Jackson State University, which the district court found as of 1962 to be a "segregative [policy]" (A.20,29), and which respondents claim to have "long ago mooted...." Opp. at 12. See Attachment A.3-4 (Hinds Community College, a Historically White Institution, "...shall, to the extent that space is now or shall become available in existing facilities or in facilities which might be constructed in the future, be the primary provider of lower-division course work at the University Center with the exception that it is understood that an engineering program will be developed at the University Center jointly by Jackson State University and the University of Mississippi"). See also A.10-11 (a committee with a majority of members not affiliated with Jackson State University, rather than Jackson State University, controls other institutions' offerings at the Center). Thus, there is a direct parallel to the situation addressed in Geier. See 597 F.2d at 1067.

Moreover, respondents' argument that the matter is "moot" is in error. First, the Board's belated changes did not end the right of white institutions to offer courses at the Universities Center. See Attachment A.8. There is a need to delimit the relationship of all institutions at the Center, which renders a conclusion of mootness inappropriate. See generally Powell v. McCormack, 395 U.S. 486, 495-501 (1969). Second, since the respondents rely on conduct after the 1975 filing of this case (A.20), their claim that the issue became "moot" is in error. The post-decision actions summarized above are, of course, even more than the showing of "some cognizable danger of recurrent violation...," which justifies injunctive relief. See United States v. W.T. Grant Co., 345 U.S. 629, 632-633 (1953). Third, the ability, annually, to change class schedules at the Center warrants characterizing the issue as one "capable of repetition, yet evading review." See Sosna v. Iowa, 419 U.S. 393, 399-402 (1975).

Respectfully submitted,

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Attachment

Decided

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969)

Board of Education of Oklahoma City v. Dowell, 111 S.Ct. 630 (Jan. 15, 1991)

Brown v. Board of Education, 347 U.S. 483 (1954)

Brown v. Board of Education, 349 U.S. 294 (1955)

Columbus Board of Education v. Penick, 443 U.S. 449 (1979)

Cooper v. Aaron, 358 U.S. 1 (1958)

Davis v. Board of Education of School Commissioners of Mobile County, 402 U.S. 33 (1971)

Dayton Board of Education v. Brinkman, 433 U.S. 526 (1977)

Dayton Board of Education v. Brinkman, 433 U.S. 526 (1979)

Goss v. Board of Education, 373 U.S. 683 (1963)

Green v. County School Board, 391 U.S. 430 (1968)

Griffin v. School Board, 377 U.S. 218 (1964)

Keyes v. School District No. 1, 413 U.S. 189 (1973)

McDaniel v. Barresi, 402 U.S. 39 (1971)

Milliken v. Bradley, 418 U.S. 717 (1974)

Milliken v. Bradley, 433 U.S. 267 (1977)

Missouri v. Jenkins, 110 S.Ct. 1651 (1990)

Monroe v. Board of School Commissioners, 391 U.S. 450 (1968)

Pasadena City board of Education v. Spangler, 427 U.S. 424 (1976)

Raney v. Board of Education, 391 U.S. 443 (1968)

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971)

United States v. Montgomery County Board of Education, 395 U.S. 225 (1969)

United States v. Scotland Neck Board of Education, 407 U.S. 484 (1972)

Wright v. Council of City of Emporia, 407 U.S. 451 (1972)

Pending

Freeman v. Pitts, 59 U.S.L.W. 3561 (Feb. 19, 1991) (review granted)

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

Office of Commissioner

February 5, 1990

Dr. James A. Hefner, President
Jackson State University
1400 J. R. Lynch Street
Jackson, Mississippi 39217

Dr. Clyde Muse, President
Hinds Community College
P. O. Box 458
Raymond, Mississippi 39154

Dear Dr. Hefner and Dr. Muse:

I was pleased with the direction of our conversation and the conclusions which we reached at lunch last week. Clearly all of us are keenly aware of the opportunity available to us at the University Center to substantially broaden the higher education services that we can provide to our constituencies in Jackson. Your willingness to reach an agreement regarding an appropriate sharing of our resources demonstrates the kind of leadership that will be critical to accomplishing our goals for the University Center and for higher education in metropolitan Jackson. Your cooperation is also in keeping with a tradition in the state where community colleges and universities have shared facilities and resources for the benefit of all our students. In the past, similar cooperative arrangement have included most of our institutions and many of the community and junior colleges.

We understand that it is an essential component of Jackson State University's role in the metropolitan area to fully develop a well-defined, upper-division, graduate and professional curriculum at the University Center, and that this mission is and shall be considered to be preeminent in utilizing the space that is available there during both daytime and evening hours.

We further understand that Hinds Community College has an important role in the education of students in lower-division courses as well as vocational, technical and associate degree programs throughout metropolitan Jackson, and that in that role it is to the advantage of the Institutions of Higher Learning, Jackson State University, and metropolitan Jackson that Hinds Community College be a full partner in higher education in this community. Furthermore, we agree that in keeping with this role

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Hinds Community College shall, to the extent that space is now or shall become available in existing facilities or in facilities which might be constructed in the future, be the primary provider of lower-division course work at the University Center with the exception that it is understood that an engineering program will be developed at the University Center jointly by Jackson State University and the University of Mississippi.

It is further understood that there may be from time to time in extraordinary circumstances, situations in which it is appropriate for the President of Jackson State University to approve lower-division course work to be offered at the University Center. Such courses shall be offered after consultation with the President of Hinds Community College and giving appropriate recognition of existing offerings by Hinds Community College which might serve the same or similar purposes. Such offerings should take place after all other possibilities, including on-campus course offerings at Jackson State and lower-divisions courses offered by Hinds Community College, are exhausted. It is important that this flexibility be preserved for Jackson State University, but it is not envisioned that it should provide an avenue for the development of a lower-division off-campus site for Jackson State University at the University Center.

In order to facilitate our understanding, we also understand that Hinds Community College will be allocated space in the spring of each year for the following academic year and that such allocation shall be made so as to enhance the presence of Hinds Community College at the University Center subject to the conditions outlined above. It is my opinion that within this understanding we can join together to make the University Center an outstanding example of the way in which universities and community colleges can join together to provide quality higher education for all of the citizens of Jackson.

Thank you again for your understanding and cooperation, as well as your insight and vision for the future.

Sincerely,

W. Ray Cleere
Commissioner

WRC:bc

UNIVERSITIES CENTER

Mississippi's Urban Education Center

3825 Ridgewood Road - Box 33
Jackson, Mississippi 39211 - (601) 982-6831

TITLE: Authorization of Academic Credit Courses/Programs Offered at the Universities Center

AUTHOR: Dr. James W. Strobel, Director
Universities Center

PURPOSE: To Outline Procedures for Approving Credit Courses Offered at the UC by Participating Institutions

EFFECTIVE: 1989 Spring Semester

REVIEWER(S): Universities Center Director, Office of Academic Affairs, and Academic Deans

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These procedures reflect the overall guidelines relating to the approval/disapproval process for credit courses and/or programs offered by participating institutions at the Universities Center. They include:

1. The time period in which course offerings should be submitted by institutions to the Universities Center Director for review prior to the official scheduling of classes.

2. Members of the Jackson State University Review Committee and their Standard Meeting Dates.

3. The initial review procedures and the approval/disapproval process by the JSU/UC Program Review Committee.

4. Contact persons at the participating institutions.

5. The Participating Institutions' option to request a hearing by a higher-level panel in case of dissatisfaction over a disapproval decision made by the JSU/UC Program Review Committee.

6. Final Action regarding approval or disapproval of courses.

TIME PERIOD FOR COURSE SUBMISSION

In order to make sure that courses will be properly cleared in time to be included in the Universities Center class schedule as well as those schedules of participating institutions, academic course offerings should be submitted to the UC Director no later than two (2) months before a particular semester term. The information would be submitted on a UC-Course Request Form, designed by the Office of the Director of the Universities Center.

Because JSU will also schedule short-term academic credit/non-credit courses throughout an individual semester, participating institutions should also submit to the UC Director non-credit offerings and/or seminars at least one (1) month before the event takes place. Although non-credit courses are not currently subject to review by the JSU Review Committee, it is important that the Director of the Office of the Universities Center be informed of proposed non-credit offerings for scheduling purposes. This would allow Jackson State University to more effectively and efficiently disseminate information on available office space and assign room numbers to each event.

After receipt of the proposed academic course offerings from the participating institutions, the Director of the Universities Center would (1) submit a Letter of Acknowledgment within one week and (2) schedule a meeting with the JSU Review Committee to begin the initial review process for academic credit courses.

STANDARD MEETINGS OF THE JSU REVIEW COMMITTEE

To expedite the approval process in time for the printing of class schedules at all participating institutions, the JSU Review Committee will maintain the following review schedule for courses submitted two months before semester begins:

-Fall Semester - 3rd Monday in April
3rd Monday in May
2nd & 3rd Monday in June

-Spring Semester -3rd Monday in October
2nd & 3rd Monday in November

-Summer Semester- 3rd Monday in March
3rd Monday in April

The Universities Center Director shall contact the committee members to cancel meetings on occasions when no academic courses have been submitted for approval by participating institutions.

MEMBERS OF THE JSU REVIEW

The proposed JSU Review Committee would consist of the following representatives:

NAME	TITLE/OFFICE
Dr. Jim Strobel	Director of Universities Center
Ms. Ruth Campbell	Associate Director of Universities Center
Ms. Ruby Hendricks	Director, Center for Lifelong Learning
Dr. Walter Crockett	JSU, Registrar
Ms. Mildred Kelly	UC Registrar
Dr. Dora Washington	Assistant Vice President Academic Affairs
Dr. Leslie McLemore	Dean, Graduate School
Dr. David Quinrone	Dean, School of Business
Dr. Johnnie Mills*	Dean, School of Education
Dr. Mary Benjamin*	Dean, School of Liberal Arts
Dr. Robert Mack*	Dean, School of Science and Technology

*Or appropriate chair representative.

CONTACT PERSONS AT THE PARTICIPATING INSTITUTIONS

The contact persons for the participating institutions are as follows:

INSTITUTION/NAME	TITLE/PHONE NO.
HINDS COMMUNITY COLLEGE	(982-6321)
Dr. Wayne Stonecypher	Academic Dean
Dr. Glenda Lester	Academic Counselor
MISSISSIPPI STATE UNIVERSITY	(982-6767)
Ms. Nancy Leach	Branch Program Assistant
Mr. Pete Walley	Engineering/Graduate Program
Mr. Robert Craycroft	School of Architecture
UNIVERSITY OF MISSISSIPPI	(982-6682)
Dr. Charlie Clark	Continuing Education Director
Dr. Krista Johns	Associate Director
Dr. Ellie Fortner	Paralegal Program/Staff Attorney
Mr. Pete Walley	Engineering Graduate Program
UNIVERSITY OF SOUTHERN MS	(982-6210)
Ms. Susie Hughes	Assistant Director
Ms. Mary Ann Purser	Coordinator

REVIEW PROCEDURES AND APPROVAL/DISAPPROVAL PROCESS

The JSU Review Committee shall:

1. Meet no more than twice a month to review course requests from participating institutions.

2. Make a determination of approval or disapproval, and the UC Director will correspond with the institution orginating the request within one week after the standard meeting of the committee. The determination would be based on the following circumstances.

   - whether the proposed courses by submitting existing course offerings and/or programs offered at the UC through Jackson State University--based on the "50-mile radius" Policy.

   - whether Hinds Community College's proposed course offerings consist of courses from a two-year program (Freshman and Sophomore) and whether these courses are offered during the day versus in the evenings, or are duplications of JSU offerings. (These guidelinges will not deviate from these outlined in the letter dated December, 14, 1984 (Paragraph 4) to Dr. Clyde Muse from the Executive Director of the Board of Trustees of State Institutions of Higher Learning. See letter attached).

The correspondence from the Director of the Universities Center shall be a "formal written response" to the directors of the participating institutions' progras at the Universities Center (copied to the Dean or Director of the program on the institutions' main campus). An Approval/Disapproval Form would be submitted stating course number/name as well as necessary comments in a cover letter.

Should all courses meet approval by the Universities Center Review Committee, the following action would take place.

1. An approval response shall be sent to the participating institution as discussed above.

2. Course(s) will be listed in the upcoming Universities Center Class Schedule.

However, if the course is disapproved, the review process would move to a higher level of consideration.

REQUEST FOR HEARING

Should a participating institution wish to challenge a "Disapproval Ruling" made by the JSU Review Committee, the institution has the option to request a hearing through a Universities Center "Executive Review Committee" which would consist of the following:

1. Vice President for Academic Affairs of Jackson State University.

2. Appropriate Vice President from participating institution requesting hearing.

3. Director or Associate Director of Universities Center.

4. UC Program Director of the participating institution making the course request and/or the Dean or Director of the program on the participating institution main campus.

5. The Executive Review Committee may invite appropriate representations from affected institutions to make presentations at the hearing. Written presentations may also be requested.

The "Request for Hearing" should be made by the participating institution to the Director of the Universities Center within one week (7 days) after receipt of a "ruling" from the Initial JSU Review Committee.

Upon receipt of the request for Hearing, the Universities Center Director's Office would immediately schedule (within 3 days) a meeting of the Executive Review Committee. This committee would meet within 10 days upon receipt of request.

After this meeting, a "Final Ruling" would be made by the Executive Committee and one of the following would occur:

1. Ruling of "Disapproval" would be sent to the participating institution making the initial request, signed by the UC Director. At that point, the matter would be dropped.

2. A ruling of "Approval" would be submitted in the same manner stated in Step 1, and the course would be included in the Universities Center Class Schedule for that School Term.

APPROVED:

President, Jackson State University

Director, Universities Center

Certificate of Service

I certify that copies of the foregoing Reply Brief were mailed to the Counsel listed below, this day of March, 1991:

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